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Thematic discussion on reform of the criminal justice system: achieving effectiveness and equity
United Nations standards and norms in crime prevention and criminal justice

Restorative justice

Report of the Secretary-General

Addendum

Report of the meeting of the Group of Experts on Restorative Justice

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I. Introduction

1. The present report is submitted to the Commission on Crime Prevention and Criminal Justice in accordance with Economic and Social Council resolutions 1999/26 of 28 July 1999 and 2000/14 of 27 July 2000.

2. In its resolution 2000/14, the Economic and Social Council requested the Secretary-General to seek comments from Member States and relevant intergovernmental and non-governmental organizations, as well as the institutes of the United Nations Crime Prevention and Criminal Justice Programme network, on the desirability and the means of establishing common principles on the use of restorative justice programmes in criminal matters, including the advisability of developing an instrument for that purpose, such as the preliminary draft elements of a declaration of basic principles on the use of restorative justice programmes in criminal matters annexed to the resolution.

3. The Council also requested the Secretary-General to convene, subject to the availability of voluntary contributions, a meeting of experts selected on the basis of equitable geographical representation to review the comments received and to examine proposals for further action in relation to restorative justice.

II. Conclusions and recommendations

4. The members of the Group of Experts on Restorative Justice supported the idea of promoting restorative justice measures in criminal justice systems for the same reasons as had most of the States that had provided written comments on the preliminary draft elements. Restorative justice would serve as a supplement to established criminal justice practices, especially in areas where such practices had not functioned adequately. The Group of Experts noted that many States had already incorporated some restorative justice measures into their criminal justice systems, but they still considered the application of such measures to be at an exploratory stage. The Group of Experts was of the view that there were still further possibilities to be expanded and developed. It agreed that the establishment of an international instrument on restorative justice, such as the preliminary draft elements, would be beneficial for States as a guideline for the application of restorative justice measures. It also noted that not all respondents were supportive to the establishment of such an instrument, however, and expressed the view that restorative justice concepts and options should be taken as a supplement to established criminal justice practices, as well as in the context of established national practices and the social, cultural, economic and other circumstances in which they were developed. When an international instrument was developed, it should take the form of a normative instrument: setting non-binding guidelines was seen as more practical and feasible than attempting to establish more mandatory or prescriptive ones, given the nature of the subject matter.

5. The Group of Experts recognized the wide range of restorative justice options being applied in Member States, its evolving nature and the importance of research and information exchange. It therefore recommended that:

(a) Research be conducted and information collected and disseminated among Member States, the institutes of the United Nations Crime Prevention and Criminal Justice Programme network and, where appropriate, among other international, regional and non-governmental organizations;

(b) The basic principles annexed to the present report be periodically reviewed to take account of new developments;

(c) Member States that had adopted restorative justice practices make information about those practices available to other States upon request;

(d) Member States assist one another in the development and implementation of research, training or other programmes, as well as activities to stimulate discussion and the exchange of experiences on restorative justice;

(e) Member States consider the provision of technical assistance to developing countries and countries with economies in transition, on request, to assist them in the development of restorative justice programmes;

(f) Member States consider making voluntary contributions for the support of the provision of such technical assistance.

6. The Group of Experts also recommended that, after consideration and approval by the Commission on Crime Prevention and Criminal Justice and other United Nations policy-making bodies, the revised draft basic principles (annex I) be given the widest possible dissemination among Member States, as well as relevant intergovernmental and non-governmental organizations.

III. Organization of the meeting

7. Pursuant to Economic and Social Council resolution 2000/14, the meeting of the Group of Experts on Restorative Justice was held in Ottawa from 29 October to 1 November 2001. The meeting was hosted by the Government of Canada. The Commission Secretariat and Legal Affairs Branch of the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat served as the secretariat for the meeting.

8. The Group of Experts reviewed the comments received from 37 Member States on the preliminary draft elements of a declaration of basic principles on the use of restorative justice programmes in criminal matters (see the report of the Secretary-General on restorative justice (E/CN.15/2002/5 and Corr.1)) and examined proposals for further action. It also considered the question of whether an international instrument in some form was desirable. There was general agreement that an instrument was desirable and it was noted that all but one of the written comments received had taken a similar view. The experts also shared the view expressed by most of the Member States responding that an instrument on restorative justice was needed to provide guidance in the establishment of national programmes, but that it should not be of a legally binding nature. The experts agreed that restorative justice measures should be flexible in their adaptation to established criminal justice practices.

9. The Group of Experts also conducted a careful review of the preliminary draft elements and proposed a number of amendments, together with a preamble in order to better explain the concept of "restorative justice" to Governments and officials not already familiar with it (see annex I for the text as revised by the Group of Experts).

A. Opening of the meeting

10. The meeting was opened by Stephen Owen, Parliamentary Secretary to the Minister of Justice of Canada. Mr. Owen outlined the experiences of Canada with restorative options, in particular in the context of initiatives that had been taken in the area of aboriginal justice programmes. He compared those initiatives with similar measures taken in other countries. Restorative processes such as the use of traditional means of conflict resolution were often suitable in such environments, both because they took into account the specific cultures and needs of the people involved and because they could often be implemented by the people themselves at the local level, creating effective programmes with limited financial and professional resources. Mr. Owen also expressed the view that it was important to bear in mind that restorative justice options were not suitable in every case. Cases often arose in which the situations of those involved prior to the offence were such that restoring them was not a desirable outcome. Such cases had led to further initiatives referred to as "transformative justice", which sought to achieve outcomes consistent with the current interests and needs of the parties rather than simply restoring the status quo ante. It was also important to bear in mind that, while restorative justice methods were often economical and cost-effective, cost factors should not be allowed to lead to their use in areas or cases for which they were not suitable.

11. The representative of the Centre for International Crime Prevention stated that, apart from the mandate given by the Economic and Social Council, discussions of restorative justice were important as a means of reconsidering the fundamental premises underlying criminal justice. That included not only the means whereby criminal justice sought to achieve its goals, but also the formulation of those goals themselves, including a re-examination of the basic roles of offenders, victims and conventional criminal justice systems, as well as the relationships between them.

B. Attendance

12. The meeting was attended by 17 experts from 16 different countries, as well as by 9 observers (see annex II).

C. Election of officers

13. The following officers of the meeting were elected by acclamation:

Chairman:	David Daubney (Canada)
Vice-Chairpersons:	Manuel Alvarez (Peru)
	Jabu Sishuba (South Africa)
	Galina Toneva-Dacheva (Bulgaria)
Rapporteur:	Kittipong Kittayarak (Thailand)

D. Adoption of the agenda

14. The Group of Experts adopted the following agenda:

1. Opening of the meeting.
2. Election of officers.
3. Adoption of the agenda and organization of work.
4. Discussion of the concept of restorative justice and its role in criminal justice systems.
5. The desirability of establishing common principles for restorative justice.
6. Discussion of preliminary draft elements of a declaration of basic principles.
7. Discussion and adoption of the report of the meeting.
8. Closing of the meeting.

IV. Discussion of the concept of restorative justice and its role in criminal justice systems

15. It was noted that it was difficult to determine a specific time or place of origin for restorative justice. Traditional and indigenous forms of justice fundamentally viewed crime as harm to people and justice as restoring social harmony by helping victims, offenders and communities to heal. Restorative approaches were prominent in the legal codes of civilizations that were the foundation of modern legal systems. Restorative elements had been present in all of the world's major legal systems for decades and, in some cases, centuries. In recent years, there had been a reassessment of the relationships between offenders, victims and the State in criminal cases and it was from that reassessment that much of the contemporary consideration of restorative justice had arisen. Some of the discussion originated with experts who participated in or comment on criminal proceedings on a professional basis, but much of it also came from victims, witnesses and offenders, whose contact with criminal justice was involuntary, and from the general public, who questioned conventional approaches to criminal justice on both moral and utilitarian grounds. One important characteristic of modern restorative justice programmes was that they avoided imbalances that favoured some stakeholders over others.

16. It was stated that, in practice, elements of restorative justice might vary significantly, depending on the principles and underlying philosophies of the national criminal justice systems in which they were applied. At a more fundamental level, however, the philosophy and basic principles had many common factors. Those basic principles and the practical applications that flowed from them were in place or under consideration in many national criminal justice systems. At the procedural level, there was a reconsideration of the status and roles played by victims, for example, calling into question the tendency of many criminal law systems to cast criminal prosecutions as an adversarial process between the State and the offender in which the victim had only the status, if any, of a witness. Substantively, outcomes that focused on retribution against the offender rather than on repairing the harm done had also been called into question.

17. The expert group examined models of restorative justice and the specific principles common to most restorative justice models in detail. One major benefit of restorative justice lay in its potential to pose important questions about how existing practices defined success and the extent to which they achieved it and to present options that might cause less harm and generate greater benefits for those involved. However, there were concerns that without some common understanding about basic principles, restorative justice might be misunderstood or might develop into

something that so closely resembled conventional criminal justice that it could no longer generate new ideas or approaches. To prevent that, it had been argued that the development of common principles was needed. There had also been concerns about the pressures placed on criminal justice systems and participants, which had been addressed by extensive safeguards in conventional systems, and other concerns about the need to ensure that restorative justice processes were protected by safeguards that guaranteed the same degree of protection, both for the participants and for the integrity of the process itself.

18. The Group of Experts was of the view that restorative justice principles lay at the foundation of existing criminal justice systems in most if not all parts of the world and it was apparent in the discussion that elements of modern restorative justice had been considered or implemented to some degree in all of the countries and regions. Generally, those were often seen as less costly and more effective than more conventional criminal justice options in many circumstances, as well as often being more sensitive to the needs of indigenous or aboriginal populations. One challenge identified was the need to implement new ideas while remaining within the overall context of the rule of law. Another challenge was ensuring that, in adjusting the balance of influence exercised by victims, offenders and the State to increase the role of victims, an appropriate balance was preserved in which the essential oversight of the process by the State was maintained.

19. There was general agreement among the experts that restorative justice practices should be seen as complementing established justice systems and not as a replacement for them. This raised a second challenge, that of finding ways to make appropriate determinations of whether conventional or restorative practices should be followed in each individual case. The experts also agreed that there was a need for flexibility in developing and implementing restorative justice policies. That included flexibility in adapting policies to the different laws, traditions and practices that existed in different countries, flexibility in applying restorative justice to each individual appropriate case and flexibility in adjusting existing restorative justice policies to take account of new developments that were expected to arise as restorative measures were implemented in different countries.

20. Daniel Van Ness briefed the experts on the history and fundamental elements of restorative justice, as well as on the degree to which it was in use in a range of countries, providing examples of actual cases. Examples included cases where restorative processes had been used instead of established justice practices, as well as cases where elements of both had been used in a complementary approach. Some cases involved restorative outcomes from conventional procedures; others involved the use of restorative practices to deal with some issues arising from a particular offence, leaving other practices to conventional procedures. Mr. Van Ness traced the history of the proposed basic principles on the use of restorative justice within the United Nations and outlined the reasons why many Member States felt that developing common principles on an international basis was important. It had been considered desirable to ensure consistency of approach and to assist States seeking to develop restorative justice ideas in a manner consistent with their existing justice systems. He clarified that the proposed basic principles were intended as general guidelines and not binding standards or rules and that, as restorative justice remained a new and developing area, any principles developed might require reconsideration or the addition of further principles as the subject matter evolved in practice.

21. In the discussion that followed Mr. Van Ness' presentation, a number of issues were raised. It was noted that legal systems periodically underwent fundamental changes to keep pace with the demands made on them and that restorative justice could be seen as such a development, although it was important that the rethinking of established practices should be seen as a process of reforming existing institutions rather than replacing them with new ones. The fundamental themes of restorative justice were described as including such elements as the empowerment of the individuals involved, including both victims and offenders; emphasis on healing; emphasis on the role of communities and consensual decision-making; and a change in the mindset of professionals in the established criminal justice system. The importance of balancing the interests of the key participants in cases was also noted. Restorative justice had developed in part as a response to the exclusion of victims and sought to redress this, but that should not go so far as to unduly reduce the role of the State in prosecuting offenders and maintaining oversight and essential

safeguards on the process. It was necessary to establish a viable balance between the influence of the State, offenders and victims, both in general and in the context of each individual case.

22. It was also noted that restorative justice did not purport to offer a complete or comprehensive response to crime. It was commonly accepted that many underlying social and economic factors contributed to crime and that policies and measures to address those factors were still important, both to prevent crime and to reduce its harmful effects on individuals and societies. Furthermore, restorative procedures must be carefully adapted if used in cases of very serious crimes, where repairing the harm was not always possible. In such cases, restorative procedures could be a useful complement to the established criminal justice system. Often, merely creating a frank record of what had occurred brought substantial psychological benefits for both offenders and victims. One example was the recent work of the Truth and Reconciliation Commission in South Africa.

23. While it was seen as desirable that both the offender and victim participate in restorative processes, there were cases in which asymmetrical practices based on restorative approaches might apply to one party if the other was not available or not willing to take part. In that context, the use of "surrogate" offenders and victims was discussed. Offenders might be allowed to have encounters with members of the community in lieu of specifically identified victims, for example. In cases where an offender was never caught, the use of surrogate offenders or other restorative measures could still be important as a way of responding to the harm suffered by victims. In all cases, it was seen as essential that those who participated did so voluntarily, but in some cases restorative responses might still be preferable to non-restorative options. It was important to treat each case individually and in an appropriate manner, bearing in mind that, whatever option might be applied, the common element was that justice should be done.

24. A key issue identified was the balance between restorative and conventional elements and the difficulty of determining which approach should be taken in individual cases. Generally, it was the view of experts that most systems should seek to apply restorative measures wherever possible, reserving conventional criminal justice options for cases where restorative methods were inappropriate or impracticable or where they were tried and did not prove successful. Most experts also expressed the view that restorative justice should not be seen as operating in parallel to conventional criminal justice measures, but as a complement to them. In some cases, individual restorative measures might apply, while in others entire cases could be dealt with in a restorative manner, but it was critical that restorative measures be seen as complementary to conventional ones and that careful decisions be made in each case as to whether they should be tried or not. Restorative justice should not become a parallel justice system, as elaborate, costly and complex as conventional criminal justice systems.

25. The experts also considered the development of fundamental principles on restorative justice as an important step at the international level, to assist countries in developing domestic practices and ensuring some degree of international consistency. Such principles should be formulated in a way that was meaningful and helpful in the context of the vast range of criminal justice traditions, laws and practices in operation in Member States. The development of standards that were too prescriptive or categorical was not seen as feasible. It was important to maintain sufficient flexibility not only to deal with a wide range of different cases, but also to permit restorative justice to continue to provide a role as a flexible and innovative alternative to established criminal justice practices. The need for an ongoing process that could keep pace with new developments in a still evolving field was also noted.

26. Developing theories as a backdrop against which restorative justice practices could be conceptualized was seen as important, but it was also noted that, in most cases, restorative justice practices had developed first, based on individual innovation or traditional practices, and that the underlying theories were being developed based on practices previously developed at the operational level. There was a need for efforts to define, describe or explain restorative justice in order to assist countries that were not familiar with the concept in developing practices useful to them. It was also noted that there were other innovative models in various countries, such as transformative justice and community justice, and that individual elements of those models might overlap with restorative justice in some cases. In that context, principles on restorative

justice should be formulated so as to allow continuing development of those related initiatives.

V. Consideration of the desirability of an international instrument

27. The Chairman reviewed the written responses of Member States on the question of a new instrument, noting that only one of the responding States had expressed serious reservations (see E/CN.15/2002/5 and Corr.1, para. 23). Several other States had expressed support for an instrument provided that it was not binding, a position that was consistent with the views expressed by many experts during the preliminary discussion. It was suggested that that was also implicit in the text of Economic and Social Council resolution 2000/14, which called for the consideration of basic principles rather than a binding international instrument. It was also noted that at its tenth session the Commission on Crime Prevention and Criminal Justice had completed the drafting of plans of action for implementing the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, adopted by the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[1] which included a plan of action on restorative justice.[2] After brief discussion, the experts were in agreement that an international instrument should be developed, provided that elements such as the need for flexibility and complementarity with established criminal justice practices were taken into account.

VI. Consideration of the basic principles on the use of restorative justice programmes in criminal matters

28. As a preliminary matter, the Chairman addressed the question of defining the term "restorative justice", reminding the experts of the need to avoid overly prescriptive language and the possibility of incorporating general language into an explanatory preamble. There was discussion of a number of specific definitive elements and a range of views were expressed about the level of detail that should be reflected. It was seen as important to have clear definitions and explanations of the concepts of restorative justice in order to bring them to the attention of those countries not already pursuing or implementing restorative justice policies. However, experts were aware of the fact that, while the core philosophies of restorative justice were widely accepted, there would not be universal consensus on every element or aspect in every Member State. It was noted that the purpose of the basic principles was to inform and encourage Member States to adopt and standardize restorative justice measures in the context of their legal systems, but that there was no intention to make them mandatory or prescriptive.

29. Experts were also aware that the theories of restorative justice were still evolving and they were concerned that overly prescriptive or narrow definitions might impede further evolutions along those lines. It was also understood that some elements of restorative justice represented a significant change for some Member States and that time would be needed to understand and adapt them to each national criminal justice system. It was therefore decided to develop a preamble in order to better explain the concept of restorative justice to those not already familiar with it.

30. The Group of Experts reviewed the texts of the proposed elements of a declaration of basic principles on the use of restorative justice programmes in criminal matters.

31. There was discussion of the meaning of the term "offender", which had legal significance in some countries, but was not defined in the basic principles. The experts decided that it was not necessary to define the term "offender" and that it would be undesirable to attempt to define the terms "victim" or "community". There were some concerns, however, that, in the legal systems of some countries, the meaning of "offender" was limited to those actually convicted or found guilty of offences. The experts agreed that the intended meaning in the basic principles was broader, including those charged with, accused of or alleged to have committed offences, depending on the circumstances of each case.

32. In the discussion of the term "facilitator", the Group of Experts also noted that references to "person" and "facilitator" should not be limited to those appointed to or authorized by the State. Facilitators could also be individuals who were properly trained, but who were not necessarily employed by or affiliated

with the State. It was also noted that, in appropriate cases, mediation, conciliation or facilitation could be carried out by groups, such as sentencing circles.

33. It was further noted that references to "criminal justice process" or "criminal justice systems" should be interpreted broadly. The intention was to include a full range of cases, which might arise at any time after the commission of an offence, but before or after conviction, after sentencing or even after the completion of a sentence. It was noted that, in some legal systems, safeguards would prevent the use of restorative alternatives at specific stages in order to protect the integrity of the legal process.

34. There was discussion of the meaning of the reference in paragraph 12 (c) of the basic principles to not using coercion or inducement by unfair means in order to obtain the participation of a victim or offender in a restorative process. The Group of Experts was aware of the fact that in most cases offenders faced the alternative of prosecution and punishment if they did not participate and was of the view that, in that context, the word "coerced" should be interpreted as referring only to extra-legal or improper coercion and not to influences deriving from the possibility of prosecution, punishment or other legal proceedings.

35. In discussing principles for the use of restorative justice programmes, there was extensive discussion of how to deal with cases where various forms of inequality between the parties involved might make the use of restorative programmes inappropriate. Examples where that might occur included cases of domestic or family violence, where the victim might be at a disadvantage with respect to the offender or other family members, or cases of small communities, where pressures might be exerted on one or more of the parties involved by the community itself. In formulating language on the issue, the experts also sought to avoid listing the various factors on which power imbalances could be based. It was decided to limit the text to a reference to "disparities leading to power imbalances, as well as cultural differences among the parties", with the understanding that disparities could include, inter alia, age, intellectual capacity, gender or racial, ethnic or cultural factors, any of which might place one of the parties at an undue disadvantage during restorative processes undertaken in the context of a particular cultural or procedural situation.

Notes

[1] See *Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000: report prepared by the Secretariat* (United Nations publication, Sales No. E.00.IV.8).

[2] *Official Records of the Economic and Social Council, 2001, Supplement No. 10* (E/CN.15/2001/30/Rev.1), part two, chap. I, sect. A, draft resolution II, annex, sect. XV.

Annex I

Revised draft elements of a declaration of basic principles on the use of restorative justice programmes in criminal matters*

Preamble

The Group of Experts on Restorative Justice,

Recalling that there has been a significant increase worldwide in restorative justice initiatives,

Recognizing that those initiatives often draw from traditional and indigenous forms of justice that fundamentally view crime as harm to people,

Emphasizing that restorative justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding and promotes social harmony through the healing of victims, offenders and communities,

Stressing that this approach enables those affected by crime to share their feelings and experiences openly, and aims at addressing their needs,

Aware that this approach provides an opportunity for victims to obtain reparation, feel safer and seek closure, allows offenders to gain insight into the causes and effects of their behaviour and to take responsibility in a meaningful way and enables communities to understand the underlying causes of crime, to promote community well-being and to prevent crime,

Noting that restorative justice gives rise to a range of measures that are flexible in their adaptation to established criminal justice systems and complement those systems, taking into account legal, social and cultural circumstances,

Recognizing that the use of restorative justice does not prejudice the right of States to prosecute alleged offenders,

Recommends that the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, annexed to the present resolution, be established to guide the development and operation of restorative justice programmes in Member States.

Annex

Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters

I. *Use of terms*

1. "Restorative justice programme" means any programme that uses restorative processes and seeks to achieve restorative outcomes.

* Economic and Social Council resolution 2000/14, annex, as amended by the Group of Experts on Restorative Justice.

2. "Restorative process" means any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.

3. "Restorative outcome" means an agreement reached as a result of a restorative process. Restorative outcomes may include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.

4. "Parties" means the victim, the offender and any other individuals or community members affected by a crime who may be involved in a restorative process.

5. "Facilitator" means a person whose role is to facilitate, in a fair and impartial manner, the participation of the parties in a restorative process.

II. *Use of restorative justice programmes*

6. Restorative justice programmes may be used at any stage of the criminal justice system, subject to national law.

7. Restorative processes should be used only where there is sufficient evidence to charge the offender and with the free and voluntary consent of the victim and the offender. The victim and the offender should be able to withdraw such consent at any time during the process. Agreements should be arrived at voluntarily and contain only reasonable and proportionate obligations.

8. The victim and the offender should normally agree on the basic facts of a case as the basis for their participation in a restorative process. Participation of the offender shall not be used as evidence of admission of guilt in subsequent legal proceedings.

9. Disparities leading to power imbalances, as well as cultural differences among the parties, should be taken into consideration in referring a case to and in conducting a restorative process.

10. The safety of the parties should be considered in referring any case to and in conducting a restorative process.

11. Where restorative processes are not suitable or possible, the case should be referred to the criminal justice authorities and a decision should be taken as to how to proceed without delay. In such cases, criminal justice officials should endeavour to encourage the offender to take responsibility vis-à-vis the victim and affected communities and support the reintegration of the victim and the offender into the community.

III. *Operation of restorative justice programmes*

12. Member States should consider establishing guidelines and standards, with legislative authority when necessary, that govern the use of restorative justice programmes. Such guidelines and standards should respect the basic principles contained herein and should address, inter alia:

(a) The conditions for the referral of cases to restorative justice programmes;

(b) The handling of cases following a restorative process;

(c) The qualifications, training and assessment of facilitators;

(d) The administration of restorative justice programmes;

(e) Standards of competence and rules of conduct governing the operation of restorative justice programmes.

13. Fundamental procedural safeguards guaranteeing fairness to the offender and the victim should be applied to restorative justice programmes and in particular to restorative processes:

(a) Subject to national law, the victim and the offender should have the right to consult with legal counsel concerning the restorative process and, where necessary, to translation and/or interpretation. Minors should, in addition, have the right to the assistance of a parent or guardian;

(b) Before agreeing to participate in restorative processes, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decision;

(c) Neither the victim nor the offender should be coerced or induced by unfair means to participate in restorative processes or to accept restorative outcomes.

14. Discussions in restorative processes that are not conducted in public should be confidential and should not be disclosed subsequently, except with the agreement of the parties or as required by national law.

15. The results of agreements arising out of restorative justice programmes should, where appropriate, be judicially supervised or incorporated into judicial decisions or judgements. Where this occurs, the outcome should have the same status as any other judicial decision or judgement and should preclude prosecution in respect of the same facts.

16. Where no agreement is reached among the parties, the case should be referred back to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to reach an agreement alone shall not be used in subsequent criminal justice proceedings.

17. Failure to implement an agreement made in the course of a restorative process should be referred back to the restorative programme or, where required by national law, to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to implement an agreement, other than a judicial decision or judgement, should not be used as justification for a more severe sentence in subsequent criminal justice proceedings.

18. Facilitators should perform their duties in an impartial manner, with due respect to the dignity of the parties. In this capacity, facilitators should ensure that the parties act with respect towards each other and should enable the parties to find a relevant solution among themselves.

19. Facilitators shall possess a good understanding of local cultures and communities and, where appropriate, receive initial training before taking up facilitation duties.

IV. *Continuing development of restorative justice programmes*

20. Member States should consider the formulation of national strategies and policies aimed at the development of restorative justice and at the promotion of a culture favourable to the use of restorative justice among law enforcement, judicial and social authorities, as well as local communities.

21. There should be regular consultation between criminal justice authorities and administrators of restorative justice programmes to develop a common understanding of and enhance the effectiveness of restorative processes and outcomes in order to increase the extent to which restorative programmes are used and to explore ways in which restorative approaches might be incorporated into criminal justice practices.

22. Member States, in cooperation with civil society where appropriate, should promote research on and evaluation of restorative justice programmes to assess the extent to which they result in restorative outcomes, serve as a complement or alternative to the criminal justice process and provide positive outcomes for all parties. Restorative justice processes may need to undergo change in concrete form over time. Member States should therefore encourage regular evaluation and modification of such programmes. The results of research and evaluation should guide further policy and programme development.

V. *Saving clause*

23. Nothing in these Basic Principles shall affect any rights of an offender or a victim that are established in national law or applicable international law.

Annex II

List of participants

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Catherine Kane (Policy Centre for Victim Issues, Canada)

Mel Lofty (Superintendent, Thames Valley Police Force, United Kingdom of Great Britain and Northern Ireland)

Elizabeth Manga Bessem (Cameroon)

Christa Pelikan (European Forum for Victim-Offender Mediation and Restorative Justice)

James V. Scott (Collaborative Justice Project, Canada)

Daniel Van Ness (Prison Fellowship International)